Supreme Court of the United States.

No. 43.—October Term, 1903.

George C. Thomas, Plaintiff in Error, vs. The United States. } In error to the Circuit Court of the United States for the Southern District of New York.

[February 23, 1904.]

George C. Thomas was indicted for violation of the internal revenue laws of the United States in that, being a broker in the city of New York, he sold certain shares of Atchison preferred stock and omitted the required revenue stamps from the memorandum of sale. He demurred to the indictment on the ground that the act of June 13, 1898, 30 Stat. 448, c. 448, which required the stamps to be affixed, was unconstitutional. The demurrer was overruled, the court, Thomas, J., delivering an opinion. 115 Fed. Rep. 207.

Trial was had, defendant found guilty, and judgment rendered, sentencing him to pay a fine of five hundred dollars.

The case was then brought here on writ of error.

Mr. Chief Justice Fuller delivered the opinion of the Court:

By the first clause of section eight of article I of the Constitution, Congress is empowered "to lay and collect taxes, duties, imposts and excises," "but all duties, imposts and excises shall be uniform throughout the United States."

This division of taxation into two classes is recognized throughout the Constitution.

By clause three of section two, representatives and direct taxes are required to be apportioned according to the enumeration prescribed, and by clause four of section nine, no capitation or other direct tax can be laid except according to that enumeration.

By clause one of section nine, the migration or importation of persons by the States was not to be prohibited prior to 1808, but a tax or duty could be imposed on such importation, not exceeding ten dollars for each person.

By clause five it is provided: "No tax or duty shall be laid on articles exported from any State."

By clause two of section ten, no State can, "without the consent of the Congress, lay any imposts or duties on imports or exports, except what may

be absolutely necessary for executing its inspection laws." By clause three the States are forbidden, without the consent of Congress, to "lay any duty of tonnage."

And these two classes, taxes so called, and "duties, imposts and excises," apparently embrace all forms of taxation contemplated by the Constitution. As was observed in *Pollock* v. *Farmers' Loan and Trust Company*, 157 U. S. 429, 557: "Although there have been from time to time intimations that there might be some tax which was not a direct tax nor included under the words 'duties, imposts and excises,' such a tax for more than one hundred years of national existence has as yet remained undiscovered, notwithstanding the stress of particular circumstances has invited thorough investigation into sources of revenue."

The present case involves a stamp tax on a memorandum or contract of sale of a certificate of stock, which plaintiff in error claims was unlawfully exacted because not falling within the class of duties, imposts and excises, and being, on the contrary, a direct tax on property.

There is no occasion to attempt to confine the words duties, imposts and excises to the limits of precise definition. We think that they were used comprehensively to cover customs and excise duties imposed on importation, consumption, manufacture and sale of certain commodities, privileges, particular business transactions, vocations, occupations and the like.

Taxes of this sort have been repeatedly sustained by this court, and distinguished from direct taxes under the Constitution. As in *Hylton* v. *United States*, 3 Dallas, 171, on the use of carriages; in *Nicol* v. *Ames*, 173 U. S. 509, on sales at exchanges or boards of trade; in *Knowlton* v. *Moore*, 178 U. S. 41, on the transmission of property from the dead to the living; in *Treat* v. *White*, 181 U. S. 264, on agreements to sell shares of stock denominated "calls" by New York stock brokers; in *Patton* v. *Brady*, 184 U. S. 608, on tobacco manufactured for consumption.

Brown v. *Maryland*, 12 Wheat. 419, and *Fairbanks* v. *United States*, 181 U. S. 283, are not in point. In the one the clause of the Constitution was considered which forbids any State, without the consent of Congress, to "lay any imposts or duties on imports or exports," and in the other, that "no tax or duty shall be laid on articles exported from any State." The distinction between direct and indirect taxes was not involved in either case.

The sale of stocks is a particular business transaction in the exercise of the privilege afforded by the laws in respect to corporations of disposing of property in the form of certificates. The stamp duty is contingent on the happening of the event of sale, and the element of absolute and unavoidable demand is lacking. As such it falls, as stamp taxes ordinarily do, within the second class of the forms of taxation.

Judgment affirmed.